IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY SEVENTH DAY OF JULY
TWO THOUSAND AND FOUR

PRESENT

THE HONOURABLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.13051 of 2004

Between:

S. Bixam, S/o Mangaiah, Hindu, 34 years,
R/o.Vattimarthy Village, Chityal Mandal, Nalgonda District.

...PETITIONER

AND

1. The Deputy Commissioner of Prohibition and Excise, Mahaboobnagar Division, Mahaboobnagar.
2. The Prohibition and Excise Inspector, Excise Station, Nalgonda District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue rule nisi calling for the records leading up to and inclusive of the orders in Crime No. B2/186/2004 dated 16.07.2004 granting interim custody of Auto bearing No. A.P.-24-V-0866 (wrongly typed as A.P.-24-U-0866 in the order) directing the petitioner to produce bank guarantee/FDR worth Rs.35,000/- and quash the same as being illegal, unjust and arbitrary.

Counsel for the Petitioner: MR.E.V.BHAGIRATHA RAO

Counsel for the Respondents: GP FOR PROHIBITION & EXCISE

The Court made the following:

ORDER:

The petitioner's Auto Rickshaw bearing No.AP-24-V/0866 was seized by the second respondent in connection with Excise Crime being PCR.No.28/2004-05 on 18.04.2004. Necessary steps for confiscation of the vehicle were initiated under Section 45 of the A.P.Excise Act, 1968. When the petitioner moved for an application for interim custody of the vehicle, the first respondent by impugned order dated 16.07.2004, ordered interim custody in favour of the petitioner, subject to the petitioner furnishing bank guarantee or fixed deposit receipt (FDR) for an amount of Rs.35,000/- (Rupees thirty five thousand only). The petitioner assails the said order.

Heard the learned Assistant Government Pleader for Excise.

Insofar as the direction to the petitioner to furnish bank guarantee/FDR, Sri E.V.Bhagiratha Rao, learned counsel for the petitioner submits that the petitioner being an Auto Rickshaw driver, is not in a position to submit bank guarantee for an amount of Rs.35,000/- (Rupees thirty five thousand only). Therefore, in modification of the orders of the first respondent, *ex debito justitiae*, this Court directs the release of the vehicle, Auto Rickshaw bearing No.AP-24-V-0866, by way of interim custody, subject to petitioner furnishing third party security from Government employee or employee of Public Sector undertaking, to the satisfaction of first respondent.

The Writ Petition is accordingly disposed of.

_____

(V.V.S.RAO, J)

27th July 2004

Note: CC by 29.07.2004

B/O

RRB

Copies To:

1. The Deputy Commissioner of Prohibition and Excise, Mahaboobnagar Division, Mahaboobnagar.
2. The Prohibition and Excise Inspector, Excise Station, Nalgonda District.
3. Two CCs to GP for Prohibition & Excise, High Court Buildings, Hyderabad (OUT).
4. Two CD copies.